

**THE ARKANSAS COMMISSION OF PUBLIC SCHOOL ACADEMIC FACILITIES
AND TRANSPORTATION
RULE GOVERNING THE USE OF DESIGN-BUILD CONSTRUCTION
BY PUBLIC SCHOOL DISTRICTS**

1.00 REGULATORY AUTHORITY

- 1.01 The Arkansas Commission of Public School Academic Facilities and Transportation's authority for promulgating this Rule is pursuant to Ark. Code Ann. §§ 6-21-113 (Act 1327 of 2005), 19-11-807 (Act 2155 of 2005) and 25-15-201 et seq.
- 1.02 This Rule shall be known as the Arkansas Commission of Public School Academic Facilities and Transportation Rule Governing the Use of Design-Build Construction by Public School Districts.

2.00 PURPOSE

- 2.01 The purpose of this Rule is to establish a process and procedure in which the school district acquires both design and construction services in the same contract from a single legal entity, referred to as the design-builder, without competitive bidding.

3.00 DEFINITIONS

- 3.01 For the purposes of this Rule, the following terms mean:
- 3.01.1 “Design-builder” means any individual, partnership, joint venture, corporation, or other legal entity that is appropriately licensed in the State of Arkansas and that furnishes the necessary design services, in addition to the construction of the work, whether by itself or through subcontracts, including, but not limited to, subcontracts for architectural services, landscape architectural services, and engineering services.
- 3.01.2 “Design-build contract” means the contract between the school district and a design-builder to furnish the architecture, engineering, and related services as required and to furnish the labor, materials, and other construction services for the same project.

4.00 DESIGN-BUILD CONSTRUCTION

- 4.01 The design-build construction process is a project delivery method by which a public school district selects a design-builder licensed in the State of Arkansas to provide architectural, landscape architectural and engineering services. The design-builder represents the single source contracting method consisting of a firm or a team of architecture, engineering and construction professionals who are at risk for the cost, schedule, quality and management of the entire project.
- 4.01.1 Any and all construction contracting performed by the design-builder shall

- be performed by a contractor qualified and licensed under Arkansas law.
- 4.01.2 The design-builder shall contract directly with subcontractors and shall be responsible for the bonding of the project.
- 4.01.3 All projects using design-build construction shall comply with state and federal law.
- 4.01.4 Design-builders shall be required to obtain at least three (3) bids for all construction trade packages.

5.00 THE USE OF DESIGN-BUILD CONSTRUCTION

- 5.01 Any school district may always use design-build construction as a project delivery method for the building, altering, repairing, improving, maintaining, or demolishing of any structure, or any improvement to real property owned by a school district. The use of a design-builder shall be especially considered by the school district, if one (1) or more of the following situations exist:
 - 5.01.1 The school district finds that the project has significant schedule ramifications, and concurrent design and construction is necessary to meet these critical deadlines and to shorten the overall duration of the construction process. Potential time savings shall be substantiated and may include operational and financial data that justify early project completion; or
 - 5.01.2 The school district finds that the design-builder's concurrent employment of design and construction professionals will contribute to significant cost savings; or
 - 5.01.3 The size of the project, or contract value, is of sufficient size to justify the risks for both the school district and the design-builder; or
 - 5.01.4 The school district finds that the project presents significant technical complexities which are best addressed by a design-builder. Technical complexities that may influence the decision to use a design-builder would include:
 - A. Program requirements that can be defined by performance criteria or regulatory standards;
 - B. Public safety;
 - C. Price guarantees that allow the school district greater cost reliability and effective management of the budget process;
 - D. Historic preservation and/or difficult remodel projects with many unknown factors, and;
 - E. Constructability challenges requiring complex phasing or highly coordinated scheduling.

6.00 THE SELECTION OF A DESIGN-BUILDER

- 6.01 School districts shall use the federal government's two-step selection process enacted in the Federal Acquisition Reform Act of 1996, Title XLI, Section 4105.
- 6.02 Step one (1) requires the school district to issue a Request for Qualifications to solicit design-builders interested in the project. After evaluating and scoring the

- responses to the Request for Qualifications, a short-list of three (3) to five (5) design-builders are sent a Request for Proposals.
- 6.03 Step two (2) requires the design-builders receiving the Request for Proposals to submit formal proposals based on the criteria identified in the Request for Proposals.
- 6.04 The school district's Request for Qualifications shall include the following contents:
- 6.04.1 Information regarding the school district, including organizational components to occupy or use the facility;
 - 6.04.2 A description of the school district's goals and objectives;
 - 6.04.3 A thorough description of the project, background information, special requirements, site location and description;
 - 6.04.4 Net or gross floor area and number of stories, if applicable;
 - 6.04.5 Estimated contract amount or limits, and financial constraints, if any;
 - 6.04.6 A clear description of preconstruction, construction and post-construction deliverables;
 - 6.04.7 Project timeline/milestones including start dates, critical dates, estimated (or desired) time of completion;
 - 6.04.8 Minimum requirements for the design-builder to be considered for the project, such as: bonding capacity, insurance requirements and demonstrated capabilities;
 - 6.04.9 Established selection criteria to measure and determine the most qualified design-builders to invite to participate in the proposal preparation stage;
 - 6.04.10 The school district's selection panel, identifying the anticipated number of persons, their backgrounds and qualifications;
 - 6.04.11 Deadline for submission of design-builders' qualification statements and number of copies required, and;
 - 6.04.12 The maximum number of finalists the school district intends to invite to participate in phase two (2) of the selection process.
- 6.05 The criteria for selecting a design-builder shall include, at a minimum:
- 6.05.1 Description and identification of the school district's organization, consultants, selection panel, design-builders who were chosen to receive the Request for Proposals and their member firms and sub-consultants;
 - 6.05.2 Instructions to the design-builders including: definitions and terms, schedules, proposal forms and any other specific presentation requests;
 - 6.05.3 Selection criteria shall be clearly detailed and at a minimum include the following:
 - A. Architectural image and character;
 - B. Technical innovation and environmental acceptability of engineered solution;
 - C. Functional efficiency and flexibility;
 - D. Adherence to the Arkansas School Facility Design Guidelines;
 - E. Description of materials and systems;

- F. Safety and security features;
- G. Energy conservation;
- H. Operational and maintenance costs;
- I. Competence of key personnel;
- J. Design and construction schedules, and;
- K. Basis of award.

6.05.4 The school district's selection panel shall review and evaluate the responses to the Request for Proposals and assign scores based upon a pre-determined scoring matrix provided by the school district that corresponds to the evaluation factors listed in Section 6.06.3, above. Evaluation factors should be listed in order of importance and weighted if desired.

6.05.5 Oral presentations shall then be conducted taking into consideration the items listed below. Design-builders shall be evaluated and ranked based on their performance.

6.05.6 Presentations by the design-builders before the selection committee shall include the following:

- 6.06.1 The order of presentation shall be determined by lottery;
- 6.06.2 Only members and employees of the design-builders may participate in the presentations;
- 6.06.3 Teams shall limit their presentations to the information provided in their proposal;
- 6.06.4 The school district shall identify and provide the audiovisual equipment to be used in the presentations, and;
- 6.06.5 School districts should videotape the presentations.

6.06 It is recommended that the school district provide a selection panel consisting of individuals who understand the needs of the district, the facility to be constructed and are knowledgeable of the complexities inherent in the design and construction industry. When selecting the panel, the school district shall consider the following types of individuals:

- 6.06.1 School district representatives and/or personnel who are familiar with the operations and objectives of the district;
- 6.06.2 Employees or users of the facility;
- 6.06.3 Well known or respected non-competing design professionals such as architects or engineers who are knowledgeable of the school district's objectives;
- 6.06.4 Non-competing construction professionals who are familiar with the school district's objectives;
- 6.06.5 Community representatives, and;
- 6.06.6 Representative of the Division of Public School Academic Facilities and Transportation.

- 6.07 The school district shall state in the Requests for Qualifications and Proposals the authority given to the selection panel. The school district must also establish the school district's limited authority to accept, or reject, the panel's recommendation.
- 6.08 It is recommended that the sum of the combined scores from the written response to the Request for Proposals and the oral presentation determine the most qualified design-builder to provide services for the school district.
- 6.09 Scoring documentation must be provided to all Request for Proposal participants at the conclusion of the process and be available to anyone else who requests it.